

## [Securities Regulation Daily Wrap Up, TOP STORY—Controversial Volcker Rule amendments adopted prior to CFTC Sunshine Act meeting without public discussion, \(Sept. 16, 2019\)](#)

Securities Regulation Daily Wrap Up

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Chairman Tarbert promised increased transparency with respect to Commission rulemaking, but Volcker Rule amendments were handled on a seriatim basis prior to the open meeting, thereby leaving discussion of two final rules focusing on housekeeping matters for public consumption.

In his first open meeting as the 14th chairman of the CFTC, Heath Tarbert trumpeted the virtues of running the agency guided by the principles of unity, collegiality, and transparency. Towards that end, the Commission [unanimously approved two final rules](#)—one addressing position limits for security futures products (SFPs), and the other dealing with public rulemaking procedures under Part 13 of the CFTC Regulations. The adoption of these rules was described as "housekeeping" undertakings during the course of the meeting.

Final rules on Volcker Rule amendments dropped from the agenda. Despite talk of greater transparency and improving public visibility with regard to the CFTC's rulemaking process, consideration of the highly controversial final rule on revisions to the Volcker Rule was removed from the agenda prior to the meeting. Notwithstanding a 3-2 split vote among the commissioners on the measure, the final rule was handled as a seriatim matter, and public comments were confined to prepared statements by the commissioners issued after the completion of the meeting. The original Volcker Rule is premised on the notion that banks should be barred from proprietary trading and from running hedge funds.

In support of the final revisions to the Volcker Rule, [Chairman Tarbert stated](#) that the initial regulations "have metastasized from Mr. Volcker's original, simple vision to the degree where his distinction between proprietary and non-proprietary trading is hardly recognizable." He also voiced concerns that the Volcker Rule may affect liquidity in the derivatives markets. [Commissioner Brian Quintenz further noted](#) that the final rule tailors and simplifies the Volcker Rule so as to enable banking entities to effectively provide traditional banking services to their clients in a manner that is consistent with the statute. Tarbert and Quintenz also issued [a joint statement in support of interagency cooperation](#) where they expressed their hope and expectation that banking regulators will work with the CFTC to address issues surrounding the supplementary leverage ratio (SLR) calculation, a matter that has impacted market liquidity.

In opposition to the final rule, [Commissioner Rostin Behnam reiterated his concerns](#) that the action would "encourage a return to the risky activities that led to the financial crisis, and perhaps further consolidate trading activity into a few institutions." He added that while the proposed rule "merely threatened to kill Volcker through a thousand little cuts, the final rule goes for the throat." He noted that the final rule significantly weakens the prohibition on proprietary trading by narrowing the scope of financial instruments subject to the Volcker Rule.

These concerns [are echoed by Commissioner Dan Berkovitz](#) as he stated, "The revised Volcker Rule will render enforcement of the rule difficult if not impossible by leaving implementation of significant requirements to the discretion of the banking entities, creating presumptions of compliance that would be nearly impossible to overcome, and eliminating numerous reporting requirements."

**Security futures position limit increase endorsed.** All five commissioners enthusiastically supported [the final rule addressing position limits and position accountability levels for security futures products](#). Those rules had not been substantively amended to account for market developments since they were first adopted in 2001. During that time period position limits on equity options had increased while the CFTC's SFP position

limits have remained unchanged. These updates to SFP position limits aim to provide regulatory comparability with equity options and minimize competitive disparity between the two markets. Commissioners [Stump](#) and [Quintenz](#) each issued statements on this final rule as well as the final rule addressing Part 13 amendments. Commissioner Berkovitz issued [a separate statement](#) on positions limits for SFPs.

**Consensus on Part 13 amendments.** All commissioners also supported [amending the Part 13 regulations](#) on public rulemaking by withdrawing the Part 13 rules, other than rule 13.2 which allows for or petitions for rulemaking. As the Administrative Procedures Act (APA) governs the Commission's rulemaking process, most of the Part 13 rules were viewed as unnecessary and defunct. Moreover, the rules, which were adopted in 1976 shortly after the birth of the CFTC have not been touched in the 43 years since then. It was also noted that this rulemaking would not repeal or limit in any way the rights that the public has today in CFTC rulemakings under the APA. Commissioners [Behnam](#) and [Berkovitz](#) each issued separate statements on this final rule.

**CFTC monitoring ongoing developments in the Middle East.** Towards the conclusion of the meeting, Chairman Tarbert acknowledged the drone strikes over the weekend on a Saudi Arabian oil processing facility which accounts for one half of Saudi oil production and five percent of the world's crude oil supply. He noted that as with any major market moving event, the CFTC immediately commenced monitoring impacted markets and will continue to do so as events unfold.

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